

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1022 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMESH SHANTILAL MISTRI

Versus

SHYAM VISHNUPAT KASHIKAR

Appearance:

MR NK MAJMUDAR for Petitioners

Mr.PC KAVINA for M/S THAKKAR ASSOC. for Respondent No. 1

SERVED BY DS for Respondent No. 4, 5, 6, 7

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/10/97

ORAL JUDGEMENT

This Revision Application has been moved by the original defendants. They have challenged the Judgment and order dated 14.7.1997 rendered by the learned 3rd Extra Assistant Judge, Vadodara in Civil Misc. Application No. 197 of 1996 whereby the present defendants prayed for condonation of delay in filing the

Appeal against the Judgment and Decree passed by the learned trial Judge on 31.7.1996 in Rent Suit No.13 of 1985. The applicants have set out the grounds for condonation of delay at length. Accordingly they came to know about the decree on 2.12.1996. Their case is that their mother expired and her legal heirs were brought on record with the consent of the concerned lawyer. It might be noted that the applicants must have been brought on record as the legal heirs and this was done by the consent of the learned Advocate who appeared for the deceased defendant (mother of the applicants herein). In the background of such facts the applicants' case has been that no intimation was given to them with regard to further proceeding of the suit and ultimately the Decree came to be passed against them in their absence. It thus clearly appears that the applicants are not to be blamed for the delay which has occasioned on account of the facts which have been disclosed by the applicants before the learned Appellate Judge. The learned Appellate Judge has made reference to the submissions that the possession of the premises was taken over by executing the Decree and therefore no effective or fruitful purpose would be served if the application for condonation was allowed. It is not in dispute and it cannot be disputed that the applicants obviously came to know about passing of the Decree for eviction when the possession was taken over from them. That is how there was a delay of 98 days. There cannot be any other evidence, except the evidence of the applicants when they said that they were not informed about the progress of the Suit before the trial Court. The learned Judge appears to have missed this salient aspect of the applicants' case and has dismissed the Miscellaneous Application.

2. In my opinion the applicants have been rightly aggrieved of the impugned judgment and order rendered by the learned 3rd Extra Assistant Judge, Vadodara when he rejected the applicants' application for condonation of delay. I have heard Mr.Kavina, learned Advocate appearing for the respondents and he has not been able to show any facts or circumstances which would go to indicate inadvertence on the part of the applicants though he asserts that possession has already been taken over by executing the Decree. Mr.Kavina further submits that the suit premises has been let out on or around 6.12.1996 to one Hanskumar D. Shah. In my opinion execution of the Decree will not be a relevant consideration while dealing with the application for condonation of delay. It might be noted that if the applicants succeed in the Appeal they would obviously be entitled to claim restitution of possession.

3. In above view of the matter and in the facts of the case this Revision Application deserves to be granted. The impugned Judgment and order rendered by the learned 3rd Extra Assistant Judge on 14.7.1997 in Civil Misc. Application No.197 of 1996 is hereby quashed and set aside and bearing in mind the peculiar facts of the case following direction is issued :

The Appeal sought to be filed along with the aforesaid Civil Miscellaneous Application will now be registered by the Appellate Court as Regular Civil Appeal and the Appeal shall proceed further from that stage in accordance with law. The same shall be dealt with and disposed of as expeditiously as possible. By consent the Appeal is directed to be disposed of as expeditiously as possible, preferably within a period of three months from the date on which the respondents file appearance in the Appeal. Status-quo which has been granted in this Revision Application will be maintained till the Appeal is finally decided.

Rule made absolute in the aforesaid terms with no order as to costs.

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